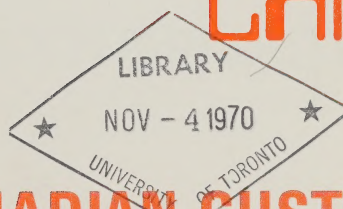


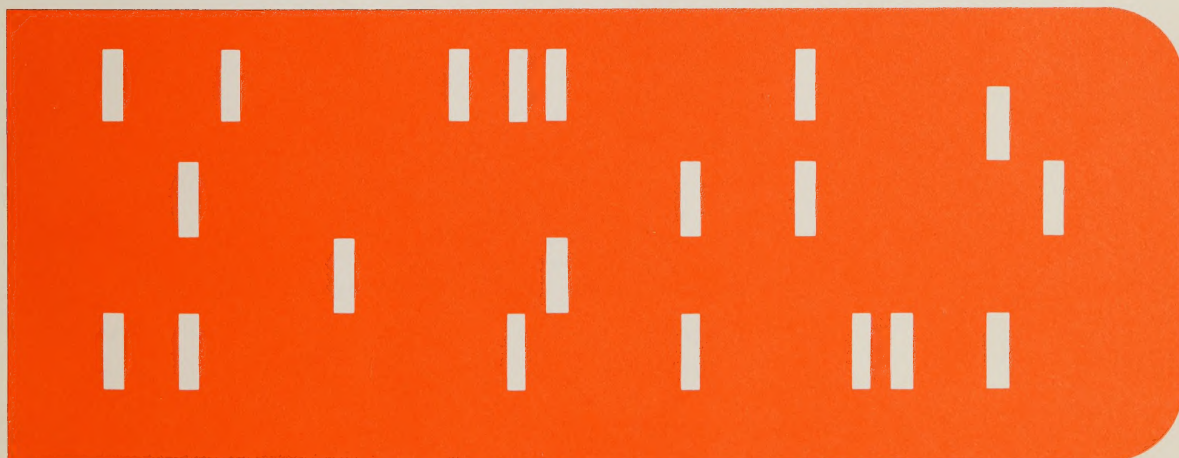
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DOING BUSINESS IN CANADA



CANADIAN CUSTOMS DUTIES



DEPARTMENT OF INDUSTRY, TRADE AND COMMERCE
OTTAWA, CANADA



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DOING BUSINESS IN CANADA

CANADIAN CUSTOMS DUTIES

Prepared by
Industrial and Trade Enquiries Division
Office of Promotional Services
Department of Industry, Trade and Commerce
OTTAWA

FOREWORD

The information in this booklet deals with the Canadian Customs Tariff and the incidence of Canadian customs duties. Every effort has been made to accurately reflect the legislation in force at the time of preparing the material and it is hoped that the text may prove to be a useful guide.

It should be appreciated, however, that the law and its administration involve a considerable amount of detail. Since the text does no more than refer to basic principles, it is suggested that an enquirer should consult with relevant authorities when seeking precise and detailed advice on a given problem at a specific time.

The Department of Industry, Trade and Commerce is prepared to assist manufacturers who require guidance on these matters.

Other publications available from the Department of Industry, Trade and Commerce, and included in the complete series "Doing Business in Canada" are:

- The Canadian Environment
- Forms of Business Organization
- Taxation — Income, Business, Property
- Taxation — Sales, Excise, Commodity
- Labour Legislation
- Construction and Equipment Standards
- Federal Incentives to Industry
- Patents, Copyrights and Trade Marks
- Tariff Preferences for Canadian Goods Abroad

Also available:

- Financing Canadian Industries



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Date of Revision: September, 1969.

CANADIAN CUSTOMS

The Canadian Customs Tariff and Canadian Customs Act are enactments of Parliament and are administered by the Customs and Excise Division of the Department of National Revenue, with headquarters in Ottawa. The actual day to day operations of the Customs and Excise Division of the Department are carried out through Regional Headquarters Offices located throughout the country, listed in Appendix 'A', and in turn by ports and out-ports located in the major centres and border points throughout Canada.

Goods entering Canada, unless specifically provided otherwise, are usually cleared at the nearest customs port. The person entering the goods inward is required to present to the Collector or the proper officer a customs invoice covering such goods, in triplicate, signed by the exporter, showing the place and date of purchase, and the name of the firm or person from whom the goods were purchased, a full description giving the quantity and value of each of the goods, and a bill of entry of such goods, in triplicate, containing the name of the importer and, if imported by water, the name of the ship, the full description of the goods, the place from which the goods are imported and of what country the goods are the growth, product or manufacture.

If a previous ruling has not been obtained from a Regional Headquarters office of the Department of National Revenue, Customs and Excise, the Collector or other proper officer will determine the value and classification applicable. Such entries are forwarded to appropriate Regional Headquarters Offices where each entry is rechecked and if the reviewing officer is of the opinion the goods have been erroneously classified or appraised or allowed entry at an erroneous rate of valuation, a fresh appraisal may be made and the entry may have to be amended with payment of additional duty on such goods, or refund of part or the whole of the duty paid as the case requires.

In view of this, if goods are to be imported into Canada on a continuing basis, foreign exporters and Canadian importers are advised to approach the Regional Headquarters Office of the Department of National Revenue, Customs and Excise, having jurisdiction over the Canadian port of entry through which the majority of their goods will be cleared, in order to obtain rulings as to

classification, rate of duty, and valuation prior to commencing shipments.

Marking of Imported Goods

There is no general requirement that goods imported into Canada must bear "country of origin" markings. However, authority does exist under Section 15 of the Canadian Customs Tariff for the Minister of National Revenue to set forth certain goods which must be so marked and the manner in which they are to be marked, labelled, stamped or branded. These regulations and the listing of goods requiring "country of origin" markings are published in Memorandum D42. This memorandum is revised at regular intervals and the goods mentioned therein are broadened as the Minister of National Revenue deems necessary. Copies of this memorandum are available from Collectors of Customs and Excise.

It is important to note that goods exported to Canada requiring such markings and not bearing these markings may be refused entry at Customs until properly marked.

Tariff Structure Classification and Rates

The schedules of the Canadian Customs Tariff comprise over 2,000 classifications, or tariff items, and sub-items with differing criteria as to the basis for the structure of each. While the majority of the classifications refer to specific commodities, many classifications and, in some instances, the classification of most general application, have been set up with reference to the component material of chief value. Others refer solely to end use, some have class or kind 'made or not made in Canada', as the basis for distinction, while still others are combinations of the foregoing.

The rates of duty, applicable under each tariff item of the Customs Tariff, are set out in three columns. The first column itemizes the rates applying under the "British Preferential Tariff" to goods which are the growth, product or manufacture of most British Commonwealth countries, colonies, properties or territory under British trusteeship when conveyed without trans-shipment from a port of any British country enjoying these benefits, to a port in Canada. The rates of customs duty set forth in column two, 'Most-Favoured-Nation Tariff', apply to goods the growth, product or manufacture of countries (i.e. United States, France, Italy, Western Germa-

ny, Belgium, Holland, Sweden, Norway, Denmark, etc.) to which the benefit of such 'Most-Favoured-Nation Tariff' treatment has been accorded either through treaties or through the General Agreement on Tariffs and Trade (GATT). The rates of customs duty, if any, set forth in column three, 'General Tariff', apply to all goods not entitled to admission under the 'Most-Favoured-Nation Tariff' or under the 'British Preferential Tariff'.

In order to obtain a firm ruling as to the tariff classification and rate applicable to an article to be shipped to Canada, a Regional Headquarters Office of the Department of National Revenue, Customs and Excise, as listed in Appendix "A", should be contacted, and information as to the name under which the product is known in the trade and the name and address of the manufacturer should be provided. It is always of assistance in classifying products if descriptive literature, complete specifications and/or photographs, together with a statement as to the process of manufacture, are included. In some instances, it may be necessary to provide a sample of the products.

Rates of duty are usually levied either on an 'ad valorem' or 'specific' basis. The term 'ad valorem' refers to duty charged at a percentage of the value of the article, i.e., 7½ per cent 'ad valorem'. 'Specific' duties are duties charged by unit of weight or other measure of quantity and, in some instances, a compound duty is levied, for example, 25 per cent 'ad valorem' plus five cents per pound.

Tariff Changes — Department of Finance

The Minister of Finance is responsible for recommending to Cabinet and Parliament any changes in the wording of tariff items or in the rates to be applied. The Department of National Revenue is responsible only for the administration of the Customs Tariff and has no power to apply rates other than those found in the existing Tariff or to collect duties at rates other than those authorized by statute.

Duties may be lowered by Order-in-Council under the authority of Section 273 of the Customs Act. This section provides that Cabinet may reduce or abolish duties or authorize a drawback of duties on "articles used as materials in Canadian manufactures". Requests for such reductions in duty are investigated by the Tariff Section of the Depart-

ment of Finance, which advises the Minister of Finance as to whether or not, in its view, the reductions should be made. Reductions in duty under Section 273 of the Customs Act can be made only for a definite period of time. When the Order-in-Council authorizing any such reduction is about to expire, the situation will again be investigated by the officials of the Department of Finance, who will advise the Minister whether or not the reduction should be continued.

In addition to lowering the tariff on materials used in manufacture, the Cabinet may, by Order-in-Council, reduce any tariffs on any goods in return for a concession granted to Canada by another country. The authority for such reduction is section 10 of the Customs Tariff. It is under this authority that a number of tariff reductions were made during the course of negotiations under the General Agreement on Tariffs and Trade (GATT). Increases and decreases of duty, other than those referred to above, must be approved by Parliament and are put forward by the Minister of Finance as part of his annual budget and become effective the following day. Subsequent legislation is made retroactive to that date.

Valuation for Duty — Department of National Revenue

Value for duty is determined in accordance with the provisions of the Customs Act, specifically Sections 35, 36, 37, 37A, 38, 40, 40A and 40B. The more important of these sections and the circumstances under which they are invoked, are described hereunder.

The basic principle is set forth in Section 36 (1) which reads as follows:

Section 36 (1) — "Subject to section 38, the value for duty shall, *notwithstanding any invoice or affidavit to the contrary*, be the fair market value, at the time when and place from which the goods were shipped directly to Canada, of like goods when sold

- (a) *to purchasers located at that place with whom the vendor deals at arm's length and who are at the same or substantially the same trade level as the importer, and*
- (b) *in the same or substantially the same quantities for home consumption in the ordinary course of trade under competitive conditions".*

A number of clarifying rules are set out in subsections (2) and (3) of Section 36 which

are to be used in applying subsection (1) as indicated above. Contingencies of distribution prevailing in the exporter's domestic market, such as quantity differentials, articles produced under private trade mark and sales which are not considered to be at arm's length are covered by subsections (2) and (3).

Section 37, subject to section 38, provides that, in circumstances where *similar but not like* goods are sold in the country of export, value for duty shall be cost of production of the imported goods plus the same gross profit percentage as is earned on cost of production when *similar* goods are sold for home consumption in the country of export.

Section 37A. Where the Governor in Council is satisfied, on a report from the Minister of National Revenue, that the application of subparagraph (i) of paragraph (e) of subsection (2) of section 36 or subsection (3) of section 36 is inequitable in that it results in discrimination against the importation of goods of a class from any country, as compared with the importation of goods of that class from any country, the Governor in Council may prescribe the manner in which the value for duty of goods of that class, as determined under section 36 or 37, shall be reduced; but the value for duty of any imported goods upon being reduced as provided in this section shall not be less than an amount equal to the cost of production of the goods plus such amount for gross profit as is deemed reasonable by the Governor in Council.

Section 38 (a) provides for cases where value for duty cannot be determined under section 36 or 37 for a number of reasons, e.g., like or similar goods are not sold in the country of export, or are not sold in such country in the circumstances described in those sections.

Section 38 (b), (c) and (d) provide that the value for duty of goods imported for assembling, packaging or further manufacture, used or obsolete goods, remnants, close-outs, discontinued or surplus goods, job lots, goods leased but not sold in the country of export, or goods imported to be used directly in the process of manufacture or production of goods, shall be determined in such manner as the Minister prescribes.

In cases where sufficient information has not been furnished or is not available, Section 40 enables the Minister to prescribe the manner of determining cost of production, gross profit or fair market value, for purposes of

sections 36 and 37.

Section 40A states that if value for duty as determined under the preceding sections is less than the selling price to the purchaser, exclusive of all charges thereon after their shipment from the country of export, the value for duty shall be such selling price less the amount if any, by which the fair market value of the goods has decreased between the time of purchase and the time of importation. This section outlines the circumstances under which internal taxes imposed within the country of export are deductible in establishing value for duty. Some other points covered by this section are the conditions under which discounts are deductible in determining value for duty, and who is considered to be the importer when goods are shipped to Canada on consignment.

Section 40B reads as set forth hereunder:

"(1) If the value for duty as determined under sections 36 to 40A does not include

(a) the amount of any subsidy or drawback of customs duty that has been allowed by the Government of any other country, or

(b) the amount or money value of any so-called royalty, rent or charge for use of any machine or goods of any description, that the seller or proprietor does or would usually charge thereon when the same are sold or leased or rented for use in the country of export,

such amount shall be added thereto.

(2) There shall be added to the value for duty as determined under section 36 to 40A the amount of consideration or money value of any special arrangement between the exporter and the importer, or between any persons interested therein, because of the exportation or intended exportation of such goods, or the right to territorial limits for the sale or use thereof."

In order to effect a ruling where goods have a fair market value within the meaning of section 36 (1), the Customs and Excise Division would require the exporter to submit the following documentary evidence to substantiate such fair market value:

(1) Certified copies of commercial invoices covering sales of like products to a representative number of different customers in the exporter's

domestic market purchasing for home consumption, under competitive conditions and in the same or substantially the same quantities.

- (2) Copies of domestic price lists and discount schedules, if available.

Obviously, the onus of proving the fair market value rests with the exporter. If he or the importer does not obtain an advance valuation ruling, the exporter may be requested at a later date to prove the fair market value which he has certified on the customs invoice.

Cash Discounts

The Customs Act makes no provision for deduction of a cash discount for ordinary duty purposes. The fair market value shown on customs invoices requires to be that of usual credit terms and the cash discount which may be taken for cash settlement should be shown in accordance with home market practice only as terms with details as to percentage and time limitations.

Freight Allowances

Where goods are sold generally in the home market of the exporter at a common delivered price (freight pre-paid or allowed) to all destinations in a prescribed territory in which the place of direct shipment to Canada is located, a similar allowance may be granted to the purchaser in Canada. Such allowances may not exceed the actual carrying charges to destination in Canada. These allowances are not allowable for ordinary duty purposes and should be deducted only in the selling price column on customs invoices but not deducted when showing the fair market value or value for duty as determined by the Department.

Manufacturing — Valuation for Duty

Where a manufacturing operation is involved the method of calculating the acceptable value for duty is somewhat different. It is based on full factory cost (cost of production) plus a percentage advance for administration costs, selling costs and profit. The reason for using such a formula is the fact that the materials and components imported for production are not usually sold in the same condition and for the same purpose, therefore valuation for duty must be ascertained as prescribed under Section 38 of the Customs Act.

The amount of the advance to be applied to factory cost (material, direct labour and factory overhead) of the production components is determined by two factors. The first factor is the gross mark-up earned on factory cost by the exporter when selling the completely finished article for home consumption in the country of export under fully competitive conditions; the second is the foreign content in the semi-finished article to be further manufactured in Canada. The advance to be applied will decrease as the foreign content in the article produced in Canada is lowered. To establish a production ruling the Regional Headquarters office of the Department of National Revenue, Customs and Excise Division, will require the following data:

1. The selling price of the completely finished article in the country of export with appropriate verification of such selling price, i.e. domestic invoices, price lists and discount schedules.
2. The factory cost of the completely finished article, broken down under the headings material, direct labour and factory overhead only.
3. The factory cost similarly broken down under the headings material, direct labour and factory overhead only, of the semi-finished article in its condition as it will be exported to this country for further manufacture and combination with materials and labour of Canadian origin.

When this data has been submitted to Customs and examined by their officials, a "factory cost plus" ruling is issued covering production components fabricated in the exporter's plant. This same ruling will give proper cognizance to parts purchased by the exporter from outside sources and exported to Canada "as is", not further fabricated in the exporter's plant or incorporated into sub-assemblies. Such purchased parts may be advanced by nominal percentages and the advance is higher when they have been produced to the exporter's specifications. Further, if some production components are imported in rough casting form as taken from the mould or as stampings from the original press, the valuation basis is factory cost plus a nominal advance.

Machinery and Equipment

The importation of used machinery and equipment warrants special mention par-

ticularly in respect of appraisal for duty purposes.

In many instances, particularly where a Canadian subsidiary is being established, the parent company does not wish to load its branch plant with substantial expenditures for capital machinery and equipment. If used but adequate machinery and equipment are available it may be desirable to release same to the branch plant operation. Although such machinery and equipment may have been fully depreciated and have a "nil" book value in the records of the parent organization, the Customs and Excise Division of the Department of National Revenue reserves the right to appraise it at the time of importation and the appraised valuation may not coincide with the exporter's book value. The general principle followed is to allow depreciation from the current replacement price of comparable machinery and equipment in the country of export if purchased in new condition at the time of importation.

Assuming the machinery and equipment have been manufactured to the specifications of the foreign exporter, or constructed in his own plant facilities, a cost plus ruling is developed and from that estimate of value a reduction is allowed in respect of depreciation.

In order to avoid any subsequent misunderstandings, it is well to discuss this very important subject with the officials concerned in advance of importation.

Dies, Moulds, Patterns, Jigs and Fixtures, etc. — Temporary Entry

The temporary entry of dies, moulds, patterns and related jigs and fixtures with duty levied on a prorated basis, depending on the length of time this equipment remains in Canada is of significance to new and existing operations considering the introduction of higher domestic content into the product finished here. Such equipment may be entered temporarily with duty levied on 1/60th of the appraised value for each month or portion thereof they remain in Canada. There is a minimum levy of \$25.00 for each importation and the duty is not refundable on proof of export, which must take place within twelve months from the date of importation.

This arrangement obviates the costly duplication of dies, moulds, patterns, etc. for short production runs and enables manufacturers to reduce customs costs and attain a higher Canadian content in the finished

product.

The Department of National Revenue has revised its "Temporary Entry Remission Order" (Memorandum D. 4-5) to include additional equipment and certain machinery which may be entered on a temporary basis for specific purposes. Interested manufacturers should contact Collectors at ports of entry or write directly to the appropriate Regional Headquarters Office of the Department of National Revenue, for further information.

Made in Canada

For the purpose of the Customs Tariff, articles shall not be deemed to be of a class or kind produced in Canada unless established Canadian industry is manufacturing at least 10% of the normal Canadian consumption.

In addition to the above, the article must be of substantial Canadian content. There is no fixed minimum content requirement established by regulation before an article may be ruled of a "class or kind made in Canada". Each case is determined on its own merits.

There are a number of items in the Customs Tariff authorizing a lower rate of duty for goods of a class or kind *not made in Canada* than for goods of a class or kind *made in Canada*.

Anti-Dumping Duty

The Anti-Dumping Act, which came into force on January 1, 1969, provides that in cases where goods are dumped, i.e. the export price is less than the normal value, and such dumping has caused, is causing, or is likely to cause material injury to the production of like goods in Canada, or has materially retarded or is materially retarding the establishment of the production in Canada of like goods as determined by the Anti-Dumping Tribunal, there shall be payable an anti-dumping duty. This anti-dumping duty is in an amount equal to the margin of dumping of the entered goods.

The Machinery Program

Effective January 1, 1968, Tariff Item 42700-1, which covers the majority of machinery and equipment used by secondary industry, provides for the remission of duty on machinery classifiable under that tariff item when the machinery being imported is not available from production in Canada, if it is in the public interest to do so. The

primary objective of providing for remission of duty in this way is to encourage the development of efficient industry by allowing users of machinery to acquire capital equipment at lowest possible cost and, at the same time, enable machinery producers to obtain the maximum protection from the tariff that will apply to the products they manufacture.

Importers of machinery who wish to determine their eligibility for remission of duty should make a formal application to the Machinery and Equipment Advisory Board. Similarly, manufacturers whose machinery would be classified under this tariff item if it were imported into Canada should so advise the Board that they are manufacturing or are in a position to do so, to insure that they receive the protection provided for by the duty imposed under Tariff Item 42700-1. Application forms together with pamphlets outlining the conditions under which applications will be considered, are available from Collectors of Customs and Excise or from:

The Secretary,
Machinery and Equipment
Advisory Board,
112 Kent Street,
OTTAWA, Ontario.

Drawbacks

A drawback of customs duties and sales or excise taxes is a rebate of those monies when imported goods are used in accordance with the regulations promulgated under the Customs Act, Customs Tariff, Excise Tax or Financial Administration Acts.

The Customs Tariff includes several drawback items which permit the return of duty to the importer when materials, machinery or equipment are applied to specific uses. These are set forth in Schedule B of the Customs Tariff.

In addition, there are customs drawback features of particular interest to Canadian exporters:

- (a) When goods on which duties and/or taxes have been paid are used or directly consumed in, wrought into or attached to, any articles manufactured or produced in Canada and exported, a drawback of 99% of the duties and/or taxes may be allowed.
- (b) When imported goods are subsequently exported from Canada to a third country, without having been

used in Canada, a drawback of 99% of the duties and/or taxes that have been paid may be allowed.

There is one drawback provision which may be of interest to manufacturers using both imported and domestic materials of the same class in the production of goods subsequently exported. In order to avoid the maintenance of segregated stocks of domestic and imported materials for duty drawback purposes, the manufacturer is allowed to claim recovery of duty paid on the imported portion on the basis of equivalent content in the exported goods. An example of this would be a stock of soda ash composed partly of Canadian soda ash and partly imported. The soda ash would be used in the refining of metal sold domestically and exported. The manufacturer could claim a 99% duty drawback on the imported soda ash in an amount equivalent to the quantity of soda ash used to refine the exported metal. "Equivalents" must be applied to exports within twelve (12) months of actual use of the imported material.

Processing of Canadian Goods Abroad — Remission of Duties

Under authority of section 22 of the Financial Administration Act authority may be obtained from the Department of National Revenue to export Canadian goods for processing and subsequent re-importation with remission of duty on all or a percentage of the Canadian content. In this regard the relevant sections of Customs Memorandum D5 are as follows:

"6. Remission is hereby granted of the duty and taxes payable on Canadian goods returned to Canada after having been advanced in value or altered in condition by any process of manufacture or other means outside of Canada where the following conditions have been fulfilled:

- (a) the goods were exported under Customs supervision;
- (b) no claim for drawback has been paid or will be filed in respect of the goods temporarily exported;
- (c) the Deputy Minister of National Revenue for Customs and Excise is satisfied that it is impracticable for the work to be done in Canada;
- (d) facilities will be established within twelve months from the date of exportation of the first shipment of the goods to do the work in Canada;

- (e) the goods were reimported into Canada within twelve months from the date on which they were exported; and
 - (f) the duty and taxes payable under the Customs Tariff and the Excise Tax Act were paid on the fair market value of the work done outside of Canada.
7. Remission is granted of seventy-five per cent of the duty and taxes payable on the value at time of export from Canada of Canadian goods returned to Canada after having been advanced in value or altered in condition by any process of manufacture or other means outside of Canada where all the conditions set out in paragraphs (a), (b), (c), (e) and (f) of section 6 have been fulfilled”.

Settlers' Effects

The Customs Tariff makes provision

under tariff item 70505-1 for the duty-free entry of settler's goods imported for his personal or household use, provided they were actually owned by the settler and in his possession and use prior to his removal to Canada. However, any goods imported under this tariff item which are sold or otherwise disposed of *within twelve months* after importation are subject to duties and taxes otherwise prescribed.

Non-residents wishing to avail themselves of this particular concession should make contact with the Canadian Immigration authorities in their particular area; with the nearest Canadian Government Trade Commissioner Office; with the Canadian Customs Attache, 1 Grosvenor Square, London, England; or directly with the appropriate Regional Headquarters Office of the Department of National Revenue, Customs and Excise Division as listed in Appendix “A”.

APPENDIX "A"

REGIONAL HEADQUARTERS OFFICES DEPARTMENT OF NATIONAL REVENUE, CUSTOMS AND EXCISE DIVISION

ATLANTIC REGION

Responsible for the Provinces of Nova Scotia, Newfoundland, New Brunswick and Prince Edward Island.

Regional Director,
Customs Operations Division,
Department of National Revenue,
Customs and Excise,
P.O. Box 1658,
Halifax, Nova Scotia.

Note: Office is located at 5670 Spring Garden Road, Halifax, Nova Scotia; Telephone — Area Code 902 — 426-2111.

QUEBEC REGION

Responsible for the Province of Quebec.

Regional Director,
Customs Operations Division,
Department of National Revenue,
Customs and Excise,
Box 6092, Station "A",
Montreal 101, P.Q.

Note: Office is located at 515 St. Catherine St. West, Montreal; Telephone — Area Code 514 — 879-6201.

CENTRAL ONTARIO REGION

Responsible for the Metropolitan Toronto area, Ottawa district, Sault Ste Marie district and those geographical areas coming within the control of these ports.

Regional Director,
Customs Operations Division,
Department of National Revenue,
Customs and Excise,
Box 410, Postal Terminal "Q",
Toronto 290, Ontario.

Note: Office is located at 55 St. Clair Ave. East, Toronto; Telephone — Area Code 416 — 966-6420.

APPENDIX "A" (cont'd)**SOUTHWESTERN ONTARIO REGION**

Responsible for the London district, Fort Erie district, Hamilton district, Niagara Falls district, Sarnia district, Windsor district and those geographical areas coming within the control of these ports.

Regional Director,
Customs Operations Division,
Department of National Revenue,
Customs and Excise,
P.O. Box 5940,
London, Ontario.

Note: Office is located at 111 Waterloo St., London;
Telephone — Area Code 519 — 679-4128.

PRAIRIE REGION

Responsible for the Provinces of Manitoba, Saskatchewan and Alberta.

Regional Director,
Customs Operations Division,
Department of National Revenue,
Customs and Excise,
1102 - 8th Ave.,
Regina, Saskatchewan.
Telephone — Area Code 306 — 525-6531.

PACIFIC REGION

Responsible for the Province of British Columbia.

Regional Director,
Customs Operations Division,
Department of National Revenue,
Customs and Excise,
P.O. Box 1200,
Postal Station "A",
Vancouver 1, British Columbia.

Note: Office is located at 789 West Pender St., Vancouver;
Telephone — Area Code 604 — 544-1456.

